

REMARKS/ARGUMENTS

No claims have been amended, cancelled, withdrawn, or added herein.

Claims 1-33 are pending.

Favorable reconsideration and allowance of the present patent application is respectfully requested in view of the following remarks.

Allowable Subject Matter

According to the Office Action, Claims 16, 17, and 20-33 are allowed, and Claims 3 and 9-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

Assignee respectfully submits that all of the pending claims should be allowable in the current form for reasons presented below. As such, dependent Claims 3, and 9-15 have not been rewritten in independent form as suggested.

Claim Rejections – 35 USC § 103

Claims 1, 2, 4-8, and 18-19 stand rejected under 35 USC § 103(a), as being unpatentable over *Oh et al.* (published US Patent Application 2004/0137860) in view of *Ariyoshi et al.* (US6961362).

Assignee respectfully traverses these rejections for the following reason.

35 USC § 103(c)(1) states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Examiner is reminded that Applications and patents will be considered to be owned by, or subject to an obligation of assignment to, the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the

application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person(s) or organization(s). (see MPEP 706.02(l)(2,3))

The undersigned Attorney of Record hereby respectfully submits that:

- (1) the reference *Oh et al.* (published US Patent Application 2004/0137860) appears only to qualify as prior art under 35 USC § 102(e); and
- (2) US Patent Application 2004/0137860 and the present patent application (Serial No. 10/750,302) were, at the time the invention of the present patent application was made, assigned to and owned entirely by QUALCOMM Incorporated.

Consequently, according to 35 U.S.C. 103(c) and MPEP 706.02(l)(2,3) *Oh et al.* is disqualified as prior art under 35 U.S.C. 103(c).

With *Oh et al.*, disqualified as prior art under 35 U.S.C. 103(c), attention is now made to the remaining cited reference *Ariyoshi et al.*

Here, the Examiner is reminded that to successfully make a prima facie rejection under 35 USC § 103, the Examiner must show that Assignee's claimed subject matter would have been obvious to one of ordinary skill in the art pertinent to Assignee's claimed subject matter at the time it was made. See, KSR International, Co. v. Teleflex, Inc., US Supreme Court (decided April 30, 2007). Some of the factors to consider in this analysis include the differences between the applied documents and Assignee's claimed subject matter, along with the level of skill associated with one of ordinary skill in the art pertinent to Assignee's claimed subject matter at the time it was made. One way in which an Examiner may establish a prima facie case of unpatentability under 35 USC § 103 would be to show that three basic criteria have been met. First, the Examiner should show that the applied documents, alone or in combination, disclose or suggest every element of Assignee's claimed subject matter. Second, the Examiner should show that there is a reasonable expectation of success from the proposed combination. Finally, the Examiner should show that there was some suggestion or motivation, either in the applied documents themselves or in the knowledge generally available to one of ordinary skill in the art pertinent to the claimed subject matter at the relevant time, to modify the document(s) or to combine document teachings. The motivation or suggestion to make the proposed combination and the reasonable expectation of success should be found in the prior art, and should not be

based on Assignee's disclosure. See, In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); See, MPEP § 2142; 2143 - § 2143.03 (regarding decisions pertinent to each of these criteria).

Furthermore, on October 10, 2007, the USPTO published in the Federal Register its Examination Guidelines under 35 USC 103 in view of the *KSR* decision, cited above. These guidelines contain a number of points. In particular, the new Guidelines state that an Examiner must articulate a reason or rationale to support an obviousness rejection. Specifically, Examiners must articulate findings as to the scope and content of the prior art to support the obviousness rejection being made. The Examiner should focus on the state of the art and not on impermissible hindsight (e.g., the applicant's disclosure). Specifically, Examiners need to account for all claim limitations in their rejections, either by indicating how each limitation is shown by the applied documents or by providing an explanation. Thus, Examiners must explain the reasoning that provides a nexus between the factual findings and the legal conclusion of obviousness. As such, even under the PTO guidelines released after the KSR decision, the Examiner should still demonstrate that each and every element of the rejected claims is shown by the applied documents.

It is respectfully asserted that all of the pending claims prevent the Examiner from meeting these standards based on *Ariyoshi et al.* for at least the following reasons.

The asserted prima facie obviousness rejection appears incomplete following the disqualification of *Oh et al.*

For example, with regard to independent Claim 1 and Claims 2 and 4 which depend there from, *Ariyoshi et al.* does not appear to disclose or otherwise reasonably suggest a device that includes "a data processor operative to process at least one data block, received in a current update interval and on at least one transport channel among a plurality of transport channels, and to provide a status of each of the at least one data block; and a controller operative to maintain a single signal quality (SIR) target for the plurality of transport channels, without maintaining an individual SIR target for each transport channel, to adjust the single SIR target based on the status of the at least one data block received in the current update interval, and to use the single SIR target for power control of data transmission on the plurality of transport channels".

For example, with regard to independent Claim 5, *Ariyoshi et al.* does not appear to disclose or otherwise reasonably suggest an apparatus that includes “means for processing at least one data block, received in a current update interval and on at least one transport channel among a plurality of transport channels, and providing a status of each of the at least one data block; means for maintaining a single signal quality (SIR) target for the plurality of transport channels, without maintaining an individual SIR target for each transport channel; means for adjusting the single SIR target based on the status of the at least one data block received in the current update interval; and means for using the single SIR target for power control of data transmission on the plurality of transport channels”.

For example, with regard to independent Claim 6 and Claims 7, 8, 18, and 19 which depend there from, *Ariyoshi et al.* does not appear to disclose or otherwise reasonably suggest a device that includes “a data processor operative to process at least one data block, received in a current update interval and on at least one transport channel among a plurality of transport channels, and to provide a status of each of the at least one data block; and a controller operative to maintain a single signal quality (SIR) target for the plurality of transport channels, without maintaining an individual SIR target for each transport channel, to increase the single SIR target if any one of the at least one data block received in the current update interval is an erased data block, to decrease the single SIR target if all of the at least one data block received in the current update interval are good data blocks, and to use the single SIR target for power control of data transmission on the plurality of transport channels”.

As such, for at least these reasons, it is respectfully requested that the rejections under 35 U.S.C. § 103(a) also be reconsidered and withdrawn.

Furthermore, Assignee’s position is that if one of ordinary skill in the art had *Ariyoshi et al.* in front of them, that person would be unable to produce the claimed subject matter of the pending claims. Rather, *Ariyoshi et al.* does not appear to relate to, disclose, describe or suggest the subject matter of the pending claims. Further, there does not appear to be any evidence which would suggest a motivation to alter the subject matter of *Ariyoshi et al.* to produce the subject matter of the pending claims.

It is noted that claimed subject matter may be patentably distinguished from the cited documents for additional reasons; however, the foregoing is believed to be sufficient. Likewise,

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it is noted that the Assignee's failure to comment directly upon any of the positions asserted by the Examiner in the office action does not indicate agreement or acquiescence with those asserted positions.

CONCLUSION

In light of the remarks above, Assignee respectfully submits that the application is in condition for prompt allowance, for which early action is requested.

Respectfully submitted,

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